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DEPARTMENT OF COMMERCE

International Trade Administration

(A-602-809, A-351-845, A-588-874, A-421-813, C-351-846)

Antidumping Duty Investigations of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, and the Netherlands and Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Preliminary Determinations of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 11, 2015, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of certain hot-rolled steel flat products (hot-rolled steel) from Australia, Brazil, Japan, and the Netherlands, and a countervailing duty (CVD) petition concerning hot-rolled steel from Brazil.¹ On October 23, 2015, the Department received timely allegations, pursuant to sections 703(e)(1) and 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of the merchandise under investigation.² Based on information provided by the petitioners, data placed on the record of these investigations by the mandatory respondents, and data collected by the Department from Global Trade Atlas (GTA), the Department preliminarily determines that critical circumstances exist for imports of hot-rolled steel from certain producers and exporters from Brazil and Japan.

¹ See Petitions for the Imposition of Antidumping Duties on Imports of Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom, dated August 11, 2015, and Petitions for the Imposition of Countervailing Duties on Imports of Certain Hot-Rolled Steel Flat Products from Brazil, Korea, and Turkey, dated August 11, 2015 (collectively, the petitions). The petitioners for these investigations are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (the petitioners).

² See Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands - Critical Circumstances Allegations, October 23, 2015, and Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan and the Netherlands - Critical Circumstances Allegations, November 2, 2015 (making public certain information in Attachment 2 of original submission) (collectively, Critical Circumstances Allegation).

DATES: EFFECTIVE DATE: [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665, and (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION

Background

Pursuant to 19 CFR 351.206(c)(2), the petitioners requested that the Department issue a preliminary affirmative determination of critical circumstances on an expedited basis. In accordance with sections 703(e)(1) and 733(e)(1) of the Act, because the petitioners submitted their critical circumstances allegations more than 20 days before the scheduled date of the final determination, the Department must promptly issue preliminary critical circumstances determinations.

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect: (A) that “the alleged countervailable subsidy” is inconsistent with the Agreement on Subsidies and Countervailing Measures (SCM Agreement) of the World Trade Organization, and (B) that “there have been massive imports of the subject merchandise over a relatively short period.”

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect: (A)(i) that “there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise,” or (ii) that “the person by whom, or for whose account, the merchandise was imported knew or should have known that the

exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales,” and (B) that “there have been massive imports of the subject merchandise over a relatively short period.” Section 351.206(h)(2) of the Department’s regulations provides that, generally, imports must increase by at least 15 percent during the “relatively short period” to be considered “massive” and section 351.206(i) defines a “relatively short period” as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed)³ and ending at least three months later.⁴ The regulations also provide, however, that, if the Department “finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely,” the Department “may consider a period of not less than three months from that earlier time.”⁵

Alleged Countervailable Subsidies are Inconsistent with the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, the Department considered the evidence currently on the record of the Brazil CVD investigation. Specifically, as determined in our initiation checklist, the following subsidy programs, alleged in the petition and supported by information reasonably available to the petitioners, appear to be either export contingent or contingent upon the use of domestic goods over imported goods, which would render them inconsistent with the SCM Agreement: Reduction of Tax on Industrialized Products (IPI) for Machines and Equipment,⁶ Brazil’s Export Financing Program (PROEX),⁷ Reintegra Program,⁸

³ See 19 CFR 351.102(b)(40) (providing that a proceeding begins on the date of the filing of a petition).

⁴ See 19 CFR 351.206(i).

⁵ *Id.*

⁶ See Brazil CVD Initiation Checklist, August 31, 2015, at 7.

⁷ *Id.*, at 12.

⁸ *Id.*

RECAP: Special Regime for the Acquisition of Capital Goods for Export Companies,⁹ Integrated Drawback Scheme,¹⁰ Export Credit Insurance and Guarantees,¹¹ Export Guarantee Fund,¹² Export Promotion and Marketing Assistance,¹³ Banco do Brasil and Banco Nacional de Desenvolvimento Econômico e Social (BNDES) ExIm loans,¹⁴ FINAME loans,¹⁵ and Automatic BNDES.¹⁶

Therefore, the Department preliminarily determines for purposes of this critical circumstances determination that there are alleged subsidies in the Brazil CVD investigation that are inconsistent with the SCM Agreement.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, the Department generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries with regard to imports of the same merchandise.¹⁷ The Department has previously issued AD orders on hot-rolled flat-rolled carbon-quality steel products from Japan¹⁸ and Brazil.¹⁹ Moreover, there are current AD orders imposed by other World Trade

⁹ *Id.*, at 13.

¹⁰ *Id.*, at 14.

¹¹ *Id.*, at 15.

¹² *Id.*, at 16.

¹³ *Id.*, at 17.

¹⁴ *Id.*, at 34.

¹⁵ *Id.*, at 35.

¹⁶ *Id.*, at 38.

¹⁷ See *Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009) unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹⁸ See *Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 34778 (June 29, 1999).

Organization members against hot-rolled steel products from Brazil and Japan.²⁰ Certain HTS numbers subject to these Brazil and Japan orders overlap with HTS numbers listed in the scope of these hot-rolled steel investigations. Therefore, there is evidence of a history of dumping of subject merchandise exported from Brazil and Japan.

To determine whether importers knew or should have known that exporters were selling at less than fair value, we typically consider the magnitude of dumping margins, including margins alleged in petitions.²¹ The Department has found margins of 15 to 25 percent (depending on whether sales are export price sales or constructed export price sales) to be sufficient for this purpose.²² The Department initiated these AD investigations based on the following estimated dumping margins: 99.20 percent (Australia); 34.28 percent (Brazil); 16.15 to 34.53 percent (Japan); and 55.21 to 173.17 percent (Netherlands). All of these margins are above the 15 to 25 percent threshold.²³ Therefore, on that basis, we preliminarily conclude that importers knew or should have known that exporters in all four countries were selling subject merchandise at less than fair value.

¹⁹ See *Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (March 12, 2002)

²⁰ See Attachment 1 of Critical Circumstances Allegation (containing “Semi-Annual Report Under Article 16.4 of the Agreement” from Australia to World Trade Organization depicting “Definitive Anti-Dumping Measures in Force, as of December 31, 2014” which lists Hot Rolled Steel Coil from, Japan, *et.al.*; Semi-Annual Report Under Article 16.4 of the Agreement” from Canada to World Trade Organization depicting “Definitive Anti-Dumping Measures in Force, as of December 31, 2014” which lists Certain Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip from Brazil, *et.al.*; and “Semi-Annual Report Under Article 16.4 of the Agreement” from Thailand to World Trade Organization depicting “Definitive Anti-Dumping Measures in Force, as of December 31, 2014” which lists Flat Hot Rolled Steel in Coils and not in Coils from Japan, *et.al.*).

²¹ See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People’s Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002) (unchanged in the final determination).

²² See, e.g., *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 31972, 31978 (June 11, 1997) (unchanged in the final determination) and *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672 (July 16, 2004) (unchanged in the final determination).

²³ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, the Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261, 54265 (September 9, 2015).

To determine whether importers knew or should have known that there was likely to be material injury, we typically consider the preliminary injury determinations of the International Trade Commission (ITC).²⁴ If the ITC finds material injury (rather than the threat of injury), we normally find that the ITC's determination provided importers with sufficient knowledge of injury. In these investigations, the ITC's finding of material injury by reason of imports of hot-rolled steel from, *inter alia*, Australia, Brazil, Japan, and the Netherlands is sufficient to impute knowledge of the likelihood of material injury for each of these countries.²⁵

Massive Imports

In determining whether there have been "massive imports" over a "relatively short period," pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

Based on evidence provided by the petitioners, the Department finds that pursuant to 19 CFR 351.206(i), importers, exporters or producers had reason to believe, at some time prior to the filing of the petition, that a proceeding was likely. Specifically, the Department concludes that the available factual information provided by the petitioners indicates that by June 2015, importers, exporters or producers had reason to believe that a proceeding was likely. The

²⁴ See, e.g., *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010), unchanged in *Certain Potassium Phosphate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Termination of Critical Circumstances Inquiry*, 75 FR 30377 (June 1, 2010).

²⁵ See *Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom*, Inv. Nos. 701-TA-545-547 and 731-TA-1291-1297 (Prelim), USITC Pub. 4570 (Oct. 2015) at 1.

Department finds the following information relevant from the press articles the petitioners provided to support their claim of “early knowledge”:

- On May 11, 2015, American Metal Market issued an article acknowledging an industry analyst at Morgan Stanley Equity Research indicating that “flat-rolled steel trade cases could move forward soon due to congressional bickering surrounding Trade Promotion Authority (TPA).”²⁶ That article included statements about the past and current state of hot-rolled coil prices, thereby indicating that the potential trade cases included hot-rolled steel.²⁷
 - On May 29, 2015, another industry source, Steel Business Briefer, indicated that an informant of a service center executive stated that he was 90 percent sure that a filing on flat-rolled products will take place next week (*i.e.*, in June). According to the informant, “US sheet mills are waiting...to finish data collection...and that {one} mill has already contacted him to gather information. {US mills are} having trouble with their customers finding out how much import they’re buying.”²⁸ The article also included assessments on hot-rolled and cold-rolled coil prices, thereby demonstrating that the potential trade cases concerned both hot-rolled and cold-rolled products.²⁹
 - On June 4, 2015, a day after trade cases were filed on corrosion-resistant steel products, American Metal Market issued an article stating that this case was the “first of many expected across U.S. steel markets in the coming weeks and months.”
- Additionally, an industry analyst at Morgan Stanley Equity Research was quoted as

²⁶ See Critical Circumstances Allegation at Attachment 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

saying that he believed that “the {U.S} industry is also working on cold-rolled and potentially hot-rolled cases as well.”³⁰

- On June 9, 2015, American Metal Market issued an article providing commentary from the chairman, president, and chief executive officer (CEO) of AK Steel Corporation (one of the petitioning companies in this investigation), confirming that the trade cases on hot-rolled and cold-rolled coil were likely to come shortly after the already-filed trade case on corrosion-resistant steel. In particular, the author indicated that, according to the CEO, “{d}omestic steelmakers are considering trade petitions against imports of hot-rolled and cold-rolled coil.” Further, the CEO was quoted as saying, “All aspects of the carbon product are being analyzed. Whether (hot-rolled coil) is the next case or the third case, all three are being looked at and one has been filed...The others are being evaluated...At this point, we look to our advisors and our lawyers to give us the go-ahead...”³¹

The above references, by industry specialists and authorities, to the impending trade cases on hot-rolled steel indicate that steel importers, exporters, and producers had, by the end of June 2015, sufficiently credible reasons to believe that forthcoming petitions were likely.³²

³⁰ *Id.*

³¹ *Id.*

³² In its November 3, 2015, submission, a Japanese producer, Nippon Steel & Sumitomo Metal Corporation, commented that the Department has previously rejected the mere presence of rumors in press articles as being too speculative to form a basis for imputing knowledge that a petition was likely. Similarly, in its November 13, 2015, comments, a Dutch producer, Tata Steel IJmuiden B.V., commented that none of the articles the petitioners cited rise to anything above speculation, claiming that the strongest characterization of the articles that could be made concerning hot-rolled steel is that the U.S. industry was looking into whether a case could be brought, not that a case would be initiated and that such an initiation was imminent. In its November 2, 2015, submission, an Australian producer/exporter, BlueScope Steel Ltd. (BlueScope) asserted that “the existence of one or two uncorroborated rumors reported in the press articles in June 2015, hardly constitutes a ‘reason to believe’ that a case against hot-rolled steel...was ‘likely,’ as required by the regulations.” On the basis of the information in various industry articles it submitted, BlueScope notes that, in many months leading up to the filing of a case against imports of coated steel in June 2015, a case against imports of hot-rolled steel had not been mentioned since the time it was first rumored in July 2014; and cases against imports of cold-rolled and coated steel had been repeatedly rumored

Thus, in order to determine whether there has been a massive surge in imports for each cooperating mandatory respondent, the Department compared the total volume of shipments during the period June 2015 through October 2015 (all months for which data was available) with the volume of shipments during the preceding five-month period of January 2015 through May 2015. For “all others,” the Department compared GTA data for the period June 2015 through September 2015 (the last month for which GTA data is currently available) with data for the preceding four-month period of February 2014 through May 2015.³³ We subtracted shipments reported by the mandatory respondents from the GTA data. With respect to Australia and the Netherlands, the shipment data do not demonstrate massive surges in imports for any producers/exporters. Therefore, we are reaching a preliminary negative critical circumstances determination with respect to Australia and the Netherlands. With respect to Brazil and Japan, we preliminarily determine the following producers/exporters had massive surges in imports.³⁴

- Brazil (A-351-845 and C-351-846): Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas da Minas Gerais S.A. (Usiminas);

but not filed. BlueScope argues that, given the repeated unreliability of rumors in the past, importers would have been understandably skeptical of any reports emerging in June 2015 of a case against imports of hot-rolled steel. We do not find interested parties’ arguments persuasive. The records of these investigations show that rumors on trade cases against imports of corrosion-resistant, cold-rolled, and hot-rolled steels cases had been circulating as far back as 2014. The records also show that these three cases were often referenced collectively, or were simply referred to as “flat rolled” cases. When trade cases were actually filed on imports of corrosion-resistant steel in early June 2015, we find that this solidified rumors into the expectation among steel importers, exporters, and producers that forthcoming petitions on the remaining products (*i.e.*, cold-rolled and hot-rolled steels) were inevitable. This is corroborated by the statements from the CEO of AK Steel Corporation in the June 9, 2015, article by American Metal Market, which illuminated the imminence of trade cases on imports of cold-rolled and hot-rolled steel, stating that the requisite data were “available” and that other cases are “going to follow” pending legal approval.

³³ The Department gathered GTA data under the following harmonized tariff schedule numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000.

³⁴ See respective preliminary critical circumstances memoranda for each proceeding, dated concurrently with this notice.

- Japan (A-588-874): Nippon Steel & Sumikin Bussan Corporation (Nippon), JFE Steel Corporation (JFE);

Conclusion

Based on the criteria and findings discussed above, we preliminarily determine that critical circumstances exist with respect to imports of hot-rolled steel shipped by certain producers/exporters. Our findings are summarized as follows.

<u>Country</u>	<u>Case Number</u>	<u>Affirmative Preliminary Critical Circumstances Determinations</u>	<u>Negative Preliminary Critical Circumstances Determinations</u>
Australia	A-602-809	None	BlueScope; all other producers/exporters
Brazil	A-351-845 C-351-846	CSN; Usiminas	all other producers/exporters
Japan	A-588-874	Nippon; JFE	all other producers/exporters
Netherlands	A-421-813	None	Tata; all other producers/exporters

Final Critical Circumstances Determinations

We will issue final determinations concerning critical circumstances when we issue our final countervailing duty and less than fair value determinations. All interested parties will have the opportunity to address these determinations in case briefs to be submitted after completion of the preliminary countervailing duty and less than fair value determinations.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we have notified the ITC of our determinations.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to exports made by certain producers and/or exporters, if we make an affirmative preliminary determination that countervailable subsidies have been

provided to these same producers/exporters at above *de minimis* rates,³⁵ we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary subsidy rates reflected in the preliminary determination published in the *Federal Register*. This suspension of liquidation will remain in effect until further notice.

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to exports made by certain producers and/or exporters, if we make an affirmative preliminary determination that sales at less than fair value have been made by these same producers/exporters at above *de minimis* rates,³⁶ we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of “provisional measures” (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination of sales at less than fair value at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. This suspension of liquidation will remain in effect until further notice.

³⁵ The preliminary determination in the countervailing duty investigation for Brazil is currently scheduled for January 8, 2016.

³⁶ The preliminary determinations concerning sales at less than fair value are due on March 8, 2016.

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.206(c)(2).

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

Dated: December 2, 2015.

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